

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

REGION 10

TYSON FOODS, INC.

Employer¹

and

Case 10-RC-15561

**INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
LOCAL UNION 612**

Petitioner

REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

The Employer, Tyson Foods, Inc., is a Delaware corporation with offices and places of business in Heflin and Ashland, Alabama, where it is engaged in the business of poultry processing. The Petitioner, International Brotherhood of Teamsters, Local Union 612, filed a petition and amended petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of all live haul drivers, yard hands-drivers, and all coordinators-dispatchers employed by the Employer at its Heflin and Ashland, Alabama locations, but excluding all clerks, security guards, mechanics, catchers, and supervisors as defined in the Act. A hearing officer of the Board held a hearing, and both parties filed briefs, which were duly considered. Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record in this proceeding, the undersigned finds:

¹ The Employer's name appears as amended at the hearing.

I. POSITIONS OF THE PARTIES AND ISSUES TO BE DECIDED

At the conclusion of the hearing, Petitioner agreed with the Employer that loader operators shared a sufficient community of interest with the petitioned-for unit and should be included in any appropriate unit. The petition was amended to include this classification.² The parties are in general agreement as to the composition of the appropriate unit except that the Petitioner would exclude and the Employer would include chicken catchers and lead chicken catchers, collectively referred to herein as catchers, in the appropriate unit. Petitioner asserts that these disputed classifications do not share a community of interest with the petitioned-for classifications. The Employer argues that the petitioned-for unit, as amended, would be arbitrary and inappropriate since the petitioned-for employees share a strong community of interest with the catch crews.

Thus, the issue presented is whether the catchers share a sufficient community of interest with the petitioned-for employees to warrant inclusion in the bargaining unit. Evidence at the hearing indicated that there are thirty-seven (37) employees in the disputed catcher classifications, but the Employer's post-hearing brief states that there are currently forty-two (42) employees in those classifications.³

The petitioned-for unit consists of approximately twenty-six (26) employees. The unit sought by the Employer would consist of approximately 63 employees. At the hearing, Petitioner asserted that it did not wish to proceed to an election in a unit other than its petitioned-for unit, as amended on the record at the hearing.

² There are five employees in the loader operator classification.

³ This difference in the count may be due to the fact that, as discussed below, there are two catcher crews that are employed by an independent contractor. Similarly, as discussed below, there are two driver crews that are employed by an independent contractor. The parties do not contend that the Employer is a joint employer of the employees of these independent contractors.

I have considered the evidence and arguments presented by the parties on this issue. As discussed below, I have concluded that the live haul drivers, yard hands-drivers, coordinator-dispatchers and loader operators share a separate community of interest, and I will exclude the chicken catchers and lead chicken catchers from the unit.

II. THE EMPLOYER'S OPERATIONS

The Employer is engaged in the business of poultry processing. Although the Employer operates facilities at several locations in the state of Alabama, only the live haul operations for its Heflin and Ashland, Alabama, processing plants are at issue in the instant case. Live haul generally refers to the process of catching and caging chickens at farms where they are raised by contractors and transporting the caged birds by tractor-trailer to processing plants owned by the Employer.

The Heflin and Ashland, Alabama, live haul operations are part of the Employer's Alabama Live Production Complex.⁴ This Complex is responsible for hatching chickens, raising them to various stages of maturity, and transporting them to the Employer's processing plants. The live haul operation at issue in the present case serves only the Heflin and Ashland processing plants and is physically centered at the Heflin plant where the employees generally report for work and where the tractors, trailers, catching machines, frontend loaders and other equipment is staged.

The Heflin and Ashland processing plants are located about twenty miles from each other. At the Heflin location, in addition to the processing plant, there is a small building

⁴ This Complex consists of all the Employer's live production facilities in the State of Alabama, including locations at Albertville (live haul operation, two hatcheries, feed mill, truck shop, and a breeder and broiler operation; Snead (live haul operation); Gadsden (live haul operation, feed mill, and truck shop); Cullman (truck shop); Empire (hatchery); Talladega (feed mill); Oxford (hatchery) and Heflin (truck shop and live haul operation that serves both the Heflin and Ashland plants).

with a break room, bathrooms, and offices for the manager, clerk and coordinator. The Ashland location consists of only a processing plant and does not have office space for the live haul operations. With the exception of some catchers, who may live close to the location of the contract farms and are picked up by supervisors or drive themselves to the farms, the live haul drivers, catchers, yard hand drivers, coordinator-dispatchers, and load operators report to the Heflin office. The Heflin/Ashland live haul and catching operations are supervised by a Live Haul Manager who reports to a Live Production Manager.

The Employer's overall production process is as follows. The Employer purchases day-old male and female parent stock from a breeder operation and places them on farms called pullet farms. The pullets are grown for 20 weeks and are then placed on hen farms where they begin to produce eggs after about five weeks. The eggs are transported to the hatchery and put into incubators where they are eventually hatched and taken to the contract farms. The length of time the chickens are allowed to grow on the farms is determined by a particular plant's target product. At the appropriate time, catchers are dispatched to catch and cage the chickens either by machine or manually. Each catch crew has a loader operator who drives a front-end loader (a modified forklift) and shuttles filled cages from the rear of the catching machine to the tractor-trailer. Live haul drivers and sometimes loader operators and yard hands drive the tractor-trailers used to transport the caged chickens from the growing farms to the processing plants at Ashland and Heflin.

III. CONTROLLING LEGAL PRINCIPLES

Board precedent is well established that a certifiable bargaining unit need only be an appropriate unit, not the most appropriate unit. Overnite Transportation Co., 322 NLRB 723 (1996). Therefore, the unit requested by a petitioner is the starting point for any unit determination. If the petitioned-for unit is an appropriate unit, even though it may not be the only appropriate unit or the most comprehensive unit, the inquiry ends. If, however, it is inappropriate, the Board may scrutinize the alternative proposals of the parties and, in its discretion, the Board may select a unit that is different from the alternative proposals. *Id.* Further, an election will not be directed in a unit that is only an arbitrary segment of a broader grouping of employees sharing a sufficient community of interest. Seaboard Marine, 327 NLRB 556 (1999).

In analyzing community of interest among employee groups, the Board considers bargaining history;⁵ extent of functional integration of operations; extent of interaction and interchange among employees; similarity of skills, qualifications and work performed; extent of centralization of management and common supervision; and similarity in wages, hours, benefits and other working conditions. See Ore-Ida Foods, 313 NLRB 1016 (1994); *affd.* 66 F3d. 328 (7th Cir. 1995).

After addressing the composition of the petitioned-for unit and the duties of the disputed classification of catchers below, I will discuss the community of interest factors.

IV. THE COMPOSITION OF THE UNIT

⁵ There is no history of collective bargaining for any of the employees at the Employer's Heflin and Ashland, Alabama locations.

A. The Petitioned –For Unit of Employees: As discussed above, the petitionedfor employees, as amended, are involved in loading live chickens on tractor trailers and hauling them to the Employer’s processing plants. Both the Employer and Petitioner agree that live haul drivers, yard-hands drivers, coordinators-dispatchers and loader operators should be included in the appropriate unit. I will describe the duties of each of these positions.

Live Haul Drivers: The parties stipulated that there are fourteen (14) employees classified as live haul drivers (herein referred to as drivers) at the Heflin and Ashland plants that are divided into seven (7) crews. A crew of two drivers is assigned to work with a catcher crew on a permanent basis. The three driver crews servicing the Ashland plant are all employees of the Employer. Two of the four driver crews servicing the Heflin plant are employees of the Employer but the other two crews are contract employees, whom both parties agree are not included in the unit.

After the drivers employed by the Employer report to work at Heflin, they perform a pre-trip inspection of their equipment. The primary duty of live haul drivers is to haul a trailer of empty cages to the farm where the catcher crews are working and haul the load of caged chickens to the processing plant where they are unloaded by receiving personnel. Before transporting the caged birds, the drivers inspect the load to make sure that it is bound and properly secured. The drivers’ head count is punched in at the scale house and the driver is given a load ticket. The driver then returns to the farms to pick up additional loads of caged chickens.

Yard Hands- Drivers: Petitioner refers to the five (5) employees in this classification as yard hand-drivers (herein called yard hands). Yard hands may perform different duties on

a daily basis based upon daily operational needs, but a significant amount of their time is spent hauling equipment, such as loaders and catching machines, to the farms. In addition, the driver called to testify at the hearing by the Petitioner, states that when he was a yard hand, he spent 75-80% of his time hauling live chickens. Because they frequently substitute for drivers, yard hands are required to possess a commercial driver's license (CDL). They also serve as the designated replacements for loader operators who are absent from work, but they do not normally perform catcher duties. Their other duties include pre-tripping the trailers they use to haul catcher crew heavy equipment to the farms and checking the fuel, oil, and hydraulics for the loaders and catching machines that they deliver to the farms.

Coordinators-Dispatchers: Petitioner refers to these employees as coordinator-dispatchers and the Employer refers to these same employees as coordinators. There are two (2) employees in this classification; one for the day shift and one for the night shift. Both are based out of the live haul office at the Heflin plant. The day shift coordinator-dispatcher is responsible for making daily schedules and is the point of contact for day shift drivers to report absences. As needed, coordinators may deliver loaders or catching machines to the farms and fill-in for drivers. The coordinators are responsible for distributing the clothing, provided by the Employer, to drivers and catchers and for dispensing protective equipment to catchers such as safety goggles, sleeves, gloves and dust masks. In an effort to equalize the duties, the Employer has recently been training the night shift coordinator to prepare the report on the number of dead on arrival chickens.⁶

Loader Operators: There are five (5) loader operators. Each catch crew is assigned

⁶The record evidence does not indicate how the coordinator-dispatchers obtain this information.

one loader operator who operates a front-end loader (a modified forklift) and transfers cages between the rear of the catching machine and a tractor-trailer. Loader operators place empty cages on the rotating table located on the trailer hooked to the rear of the catching machine. The loader operators then transfer the full cages from the rotating table to the tractor-trailers to be loaded for transport by the drivers to the processing plants.

B. Duties of the Catchers and Lead Catchers, the Disputed Classifications: The work of the catchers and lead catchers, collectively referred herein as catchers, is primarily performed inside the chicken houses at the contract farms. The catchers are organized into crews. Of the seven catching crews assigned to the Heflin/Ashland operations, four are assigned to Heflin and three to the Ashland plant. As noted above, two of the three Ashland catcher crews are operated by independent contractors.⁷ Accordingly, there are five catcher crews employed by the Employer. Four of these five catcher crews catch chickens using mechanical chicken harvesters and one crew catches chickens manually. Depending on the season – there is one extra crew member in the summer to hose the birds to keep them cool - the machine-catch crews are composed of five or six catchers, one loader operator and a statutory supervisor. The hand-catch crew is composed of about twelve catchers, one loader operator and normally a supervisor, but this latter position is currently vacant and the lead

catcher is acting as the supervisor. Each of the five catcher crews employed by the Employer has a lead catcher.⁸

⁷The parties do not contend that the two independent contractor catcher crews should be included in any unit found to be appropriate. The Employer asserts that the only support it provides to these contract catcher crews are two of its own employees, one in a driver classification and the other a yard hand, who work as loader operators on the contract crews, and both of whom the parties agree are properly included in the unit. ⁸The parties do not contend nor do I find that the lead catchers are statutory supervisors. The Employer presented testimony that the lead catchers perform the same duties as catchers except that, when the supervisor

The hand catchers physically pick up the chickens and place them in the cages. Three catchers operate a catcher machine. One catcher on the front end of the machine uses a joy stick type control box to manipulate rubber fingers to brush the chickens onto a conveyor belt that moves the chickens to the back of the machine. The two catchers on the backside of the machine operate controls which direct the chickens off the conveyor belt into the cages. When a cage is full, they spin the rotating table to move an empty cage into position. Two catchers hand-catch stray birds the machine misses. All of the catchers on the crew rotate among the jobs on the machine.

C. Discussion of the Community of Interest Factors: As stated above, the community of interest factors include bargaining history; extent of functional integration of operations; extent of interaction and interchange among employees; similarity of skills, qualifications and work performed; extent of centralization of management and common supervision; and similarity in wages, hours, benefits and other working conditions. I will consider each of these factors seriatim.

1. Bargaining History: There is no bargaining history for the employees in this proceeding. In support of its position that catchers should be excluded from the unit, Petitioner cites its collective bargaining agreements with the Employer, effective 2004-2007, for the Employer's Gadsen and Blountsville, Alabama, Live Haul Operations. These contracts cover live haul drivers, extra drivers (yard hands) and dispatchers, but exclude all other employees, including catchers. Notwithstanding Petitioner's argument, there is an absence of bargaining history concerning the employees in the instant case.

is absent, they may drive crews to the farms in the company van, ensure that porta-toilets, catching pans and catching boxes are transported to the farms, ensure that machinery is operating properly, and perform administrative paperwork such as completing time, load and head count sheets.

2. Extent of Functional Integration of Operations: The record supports some evidence of the finding of functional integration of the work of the employees in the petitioned-for unit with the work of the catchers in the disputed classifications. All employees at issue in this case, with the exception of some catchers who live close to the farms, report to the Heflin live haul office to receive assignments, work clothes, and safety gear from the coordinators. The catchers and loader operators then report to their assigned growing farms.

The catchers catch and cage chickens manually and by machine. The loader operator operates a front-end loader to shuttle the filled cages to the tractor trailer. The live haul drivers, who usually arrive at the farms about 30 to 45 minutes after the catcher crew and its loader operator have already started working, transport the chickens to the Employer's processing plants. The yard hands are responsible for maintaining the catcher heavy equipment, delivering it to the farms, and substituting for loader operators and drivers. The coordinators share the responsibility of delivering this equipment to farms with the yard hands.

3. Extent of Employee Contact and Interchange: As discussed above, there is some functional integration of the work of the petitioned-for unit employees and catchers, which results in some limited work-related contact. Employees have contact with each other when they report to the Heflin office to receive their work assignments, clothing and safety gear from the coordinators, although all of the catchers do not report to that office because supervisors may pick them up and some drive themselves directly to the farms. As described infra, the crews report to the Heflin office at different times for different shifts.

The catchers and loader operators on the same crew have work-related contacts because their work is primarily performed at the contract farms. The two drivers permanently assigned to that catcher crew are at the farm long enough to drop-off empty cages and pick up loads. The record evidence does not reveal whether the catcher crews, including the loader operator assigned to that crew, are permanent crews and does not disclose the extent of workrelated contact between the various crews. Yard hands and coordinators may come in contact with other employees when they deliver materials to the farm. The driver, called as a witness by Petitioner, formerly worked as a yard man and is currently a driver assigned to the hand catcher crew. He testified that he has some contact with the loader operators when they are loading the trucks but his contact with catchers is limited to seeing them briefly when he reports to the Heflin office at the beginning and end of his shift.

The record discloses a significant number of permanent and temporary transfers and interchange between drivers, yard hands and loader operators. According to the Employer, an unspecified number of loader operators previously worked as catchers at unspecified times, including Nathan Wright and David Hill (who are currently employed), Shane Childs, (who is no longer employed) and Johnny Barnes (who worked as a catcher and was promoted to loader operator and then to supervisor).

The record evidence indicates that the normal progression for permanent transfers is generally CDL loader operator to yard hand to driver. For example, former loader operators Jason Presley, James Harris and Henry Jakes are now yard hands and former yard hands Eldridge Keith and Johnny McMichael now work as fulltime drivers.

With respect to temporary interchange, as a general rule, there is regular interchange between the yard hands, loader and drivers, but little interchange with the catchers.

Specifically, yard hands regularly substitute for drivers and loader operators but the Employer cited only one instance “a while back” when Lance Bradon, a yard man helped the crew operate a catcher machine. Once or twice a week, a yard hand or driver may operate the loader when the loader operator is absent. Similarly, about once per week, a loader operator with a CDL license might fill-in for a driver. The Employer’s witness did not know the frequency, but apparently on a less frequent basis when the crew is shorthanded, a loader operator may assist so that a catcher can take a break or a driver with a loader license may give the loader operator a break to have a drink or eat a sandwich. This witness also testified that sometimes a yard hand might run the loader so the loader can run the catching machine. In certain circumstances, where the farms are in close proximity to the plant, drivers with loader licenses will perform both loading and hauling duties and get paid for both. The Employer also cited one occasion on an unspecified date when the crew was undermanned and Steven Boyd, a former supervisor and driver, operated the catch machine.

In summary, although there is significant evidence of permanent transfers and temporary interchange between and among the job classifications in the petitioned-for unit, transfers and interchange between those classifications and catchers is minimal. Lack of significant employee interchange between groups of employees is a strong indicator that employees enjoy a separate community of interest. Executive Resources Associates, 301 NLRB 400, 401 (1991). I find that the evidence in support of this factor supports the conclusion that the petitioned for unit, as amended, could be found to be an appropriate unit.

4. Qualifications, Similarity Of Skills And Work Performed: To

operate its loader, the Employer requires that the employee be trained and licensed under its in-house loader license process. The training for loader operators involves safety training,

watching a video, testing, and on-the -job training and observation. The Employer issues a loader operator's license once the employee has demonstrated the ability to operate the loader safely. Drivers are required to have CDL licenses. Because they regularly substitute for drivers and loaders, yard hands must have a CDL and an employer-issued loader license. An applicant applying for a yard hand position would first be hired as a CDL loader operator. Both coordinators possess CDL licenses. None of the catchers has a CDL license. Although they are not required to have it, three or four catchers at Heflin/Ashland have loader licenses and an unspecified number of live haul drivers have loader licenses.

The drivers, loaders, yard hands and coordinator-dispatchers all operate vehicles that require a CDL and/or the Employer-issued loader license. The lead catcher is not required to possess a CDL or loader license to drive the company van. Because the qualifications, skills and functions of the catchers are significantly different from those of the classifications in the petitioned-for unit, I find that this factor supports the conclusion that the petitioned for unit, as amended, could be found to have a separate community of interest.

5. Extent of Centralization Of Management And Common Supervision: The Heflin/Ashland live haul operation is supervised by Blaine Lacy, Live Haul Manager, who has overall supervision of all the job classifications included in the petitioned-for unit, as amended, and over the catchers. The Assistant Live Haul Manager position, formerly held by Lacy, is currently vacant but a Line Haul Supervisor is now handling the duties of that position. Lacy reports to Live Production Manager Fred Heatherly who reports to the Alabama Live Production Complex Manager.

As discussed above, the Employer employs five catcher crews with four targeted to service Heflin and one for Ashland. In addition to catchers, a lead catcher, a loader operator

and two drivers permanently assigned to work with the crew, each crew is intended to have a supervisor. At present, however, there are only three salaried catch crew supervisors who all report to Lacy.

Lacy testified that he prefers that employees follow the chain of command, but the rank and file may approach him directly about work issues. According to Lacy, the catcher crew supervisors may counsel employees but they do not possess the independent authority to suspend or terminate a catch crew employee. Such decisions are handled by Lacy and the Human Resources Department. The driver called as a witness for Petitioner testified that he consults with supervisors about work-related issues but he identified Lacy as his supervisor.

Based upon the record testimony, I find that the labor relations and supervision of the classifications at issue are centralized but this factor is somewhat diminished by the fact that each catcher crew has different supervisors.

6. Similarity In Hours, Wages, Benefits And Other Terms And Conditions Of Employment: The shift hours for the driver and catcher crews fluctuate contingent upon the number of chickens available at the farms and the quantity needed at the processing plants. There are four shifts for the Heflin crew with the first crew starting work around 5:00 p.m., the second crew around 8:00 to 9:00 p.m., the third crew from about 1:00 to 3:00 a.m., and the last crew from about 3:00 to 5:00 a.m. The Ashland crews have about the same schedules except they do not have a crew starting around 1:00 to 3:00 a.m. The drivers and catchers generally work the same shifts except the drivers may clock in 30-45 minutes after the catch crew starts work because it takes that amount of time for a catcher crew to catch the first load of caged chickens.

The drivers, yard hands, coordinators, and loader operators all punch a time clock at the Heflin live haul office. However, the catchers record their time on a sign-in sheet at the Heflin plant.

Wage rates for the classifications in issue vary based on the job classification. Machine crew catchers are paid \$2.09 per thousand chickens caught. Qualified hand catchers are paid a flat rate per thousand chickens with the flat rate decreasing as the number of qualified hand catchers on the crew increases. For example, if there are four qualified catchers on the crew, the rate is about \$4.00 plus per thousand; for five qualified catchers the rate is about \$3.90 per hour and six qualified catchers on the crew would be reduced to about \$2.00 per thousand. The qualified catchers split the lump sum obtained from the flat rate. Trainee hand catchers are paid an hourly rate of around \$8.00 to 8.25 per hour until they become qualified. Lead catchers earn a premium of twenty-five cents per thousand chickens when the supervisor is absent.

Ashland drivers are paid a \$38.97 per load rate while the Heflin drivers are paid a slightly higher \$39.34 per load rate. The difference in the rates compensates the Heflin drivers for having to drive a longer distance for some of their loads. Drivers are also paid an hourly rate based on their years of service, at a top rate of about \$13.63 per hour, if they have to wait for excessive periods of downtime at the contract farms.

Loader operators with CDLs earn \$16.96 per load, non-CDL loader operators earn \$14.54 per hour and trainee loader operators are paid \$11.59 per hour. Loader operators are also paid for waiting time at an \$11.59 per hour rate. Yard hands are paid at the Ashland driver's rate of \$38.97 per load when they are hauling for either Ashland or Heflin. When a yard hand is assigned as a loader operator on a catch crew, the employee is paid at the CDL

loader operator rate of \$16.96 per load. The coordinators are paid an hourly rate, based on their seniority and years of service, regardless of the type of work they are doing. The record does not indicate the range of pay for the coordinators. All employees are eligible for overtime pay for work over 40 hours in a week.

The employees are all eligible for the Employer's fringe benefits, including medical insurance, dental and vision benefits, a 401(k) plan, a stock purchase plan and vacation and holiday pay. Although all the employees enjoy the same benefits and work rules, I find that the significant difference in the manner of compensation between the employees in the petitioned-for unit versus the catchers supports the conclusion that the petitioned for unit, as amended, could be found to have a separate community of interest.

7. Conclusions Concerning the Community of Interest Factors: Based on the foregoing, and the record as a whole, and applying the community of interest principles discussed above, I find that the petitioned-for unit employees share a separate community of interest from that of the catchers and lead catchers. The petitioned-for unit of Heflin/Ashland live haul operations is composed of a distinct group of employees with interests separate from those of the catchers and lead catchers that Petitioner seeks to exclude. While the functional integration of the live haul operations is a factor, weighing all the factors in this case leads to the conclusion that the live haul drivers, yard hands, loader operators and coordinators/dispatchers share a separate community of interest apart from the catchers and lead catchers. In addition to sharing fringe benefits and general working conditions, these employees share similar skill levels, wage rates and significant interchange. The limited number of transfers from catcher to the other job classifications reflects the differences in training, job skills and

duties. Accordingly, I shall exclude chicken catchers and lead chicken catchers from the unit found appropriate herein.

V. CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.⁹
3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer employed at the Employer's Heflin and Ashland, Alabama facilities.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.

All live haul drivers, yard hands, coordinators/dispatchers, and loader operators at the Employer's live haul operations in Heflin and Ashland, Alabama, excluding lead chicken catchers, chicken catchers, office clerical employees, guards and supervisors as defined by the Act.

9The parties stipulated at the hearing that the Employer is a Delaware corporation with offices and places of business in Heflin, Alabama where it is engaged in the business of poultry processing. During the past twelve

VI. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by International Brotherhood of Teamsters, Local Union 612. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who are employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike that have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are: (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began; and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

months, a representative period, the Employer sold and shipped goods valued in excess of \$50,000 directly to

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly it is hereby directed that within seven (7) days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized. This list may initially be used by me to assist in determining an adequate showing of interest. I shall, in turn, make the list available to all parties to the election, only after I shall have determined that an adequate showing of interest among the employees in the unit found appropriate has been established.

To be timely filed, the list must be received in the Regional Office, Suite 1000, Harris Tower, 233 Peachtree Street, N.E., Atlanta, Georgia 30303, on or before **November 1, 2005**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (404) 331-2858. Since the list will be made available to all parties to the election, please

customers located outside the state of Alabama.

furnish a total of two copies, unless the list is submitted by facsimile in which case no copies need be submitted. If you have any questions, please contact the Regional Office. **C.**

Notice Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on non-posting of the election notice.

VII. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, DC 20570-0001. This request must be received by the Board in Washington by 5:00 P.M., (EDT) on **November 8, 2005**. The request may not be filed by facsimile.

Dated at Atlanta, Georgia, on this **25th day of October, 2005.**



Claude T. Harrell, Jr., Acting Regional Director
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